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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

MICHAEL EWELL,

Plaintiff and Appellant,

v.

CALIFORNIA STATE PERSONNEL  
BOARD,

Defendant and Respondent;

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION,

Real Party in Interest and  
Respondent.

E070725

(Super.Ct.No. CIVDS1614922)

OPINION

APPEAL from the Superior Court of San Bernardino County. David Cohn, Judge.

Affirmed.

Law Office of Zulu Ali, Zulu Ali and Geoffrey W. Sorkin for Plaintiff and  
Appellant.

No appearance for Defendant and Respondent.

Michael P. Doelfs for Real Party in Interest and Respondent.

Plaintiff and appellant Michael Ewell was dismissed from his position as a correctional officer for having a sexual relationship with a prison inmate and lying about it in a subsequent investigation. Ewell appealed to defendant and respondent California State Personnel Board (the Board), which upheld the dismissal. So too did the trial court after Ewell petitioned for a writ of administrative mandate. On appeal, Ewell contends that the Board and the trial court erred in various ways. Ewell, however, did not include a record of the proceedings before the Board in the record for this appeal. Because that omission is fatal to his appeal, we affirm.

## I. FACTUAL AND PROCEDURAL HISTORY

We take the facts from the Board's decision, which Ewell attached to his brief in support of a writ of mandate. Ewell was hired by real party in interest and respondent California Department of Corrections and Rehabilitation (the Department) in 2008. In 2014, while assigned to the California Institution for Women in Chino, Ewell began a sexual relationship with an inmate. In March 2015, during an internal investigation surrounding his actions, Ewell denied having sexual contact with the inmate. The inmate, however, was able to provide "numerous accurate details about [Ewell's] personal life and markings on [his] body." The Department dismissed Ewell from his position a few months later, alleging that Ewell had an inappropriate and sexual relationship with the inmate and that he was dishonest during the subsequent investigation.

Ewell appealed his dismissal to the Board. Following a hearing, an administrative law judge (ALJ) filed a proposed decision sustaining Ewell's dismissal, which the Board adopted.

Ewell then filed a petition for a writ of administrative mandate, pursuant to Code of Civil Procedure section 1094.5, contending that no substantial evidence supported the Board's decision. The trial court denied the petition.

The Board did not participate in the writ proceeding and has not filed a brief on appeal.

## II. DISCUSSION

Disciplinary decisions made by the Board are reviewed "to determine whether substantial evidence supports the determination . . . ." (*Coleman v. Department of Personnel Administration* (1991) 52 Cal.3d 1102, 1125.) Thus, on appeal, "the scope of review is the same in the appellate court as it was in the superior court, that is, the appellate court reviews the *administrative determination*, not that of the superior court, by the same standard as was appropriate in the superior court." (*Schmitt v. City of Rialto* (1985) 164 Cal.App.3d 494, 501, italics added.)

Here, Ewell did not provide this court with a record of the proceedings before the Board. Although Ewell's notice designating the record on appeal indicates he sought to proceed by using a clerk's transcript pursuant to California Rules of Court, rule 8.122, which provides generally that "all exhibits admitted in evidence, refused, or lodged [will be] deemed part of the record," such exhibits do not include records from administrative proceedings. (Cal. Rules of Court, rule 8.122(a)(3), (b)(4)(B) ["The clerk must not

include in the transcript the record of an administrative proceeding that was admitted in evidence, refused, or lodged in the trial court.”].) Rather, to include administrative proceedings as part of the record on appeal, Ewell was required to separately identify the administrative record by title and date pursuant to rule 8.123, which he did not do. (Cal. Rules of Court, rules 8.122(b)(4)(B), 8.123.)

Without a record of the proceedings before the Board, there is no way for us to meaningfully determine whether the Board’s decision was supported by substantial evidence. For instance, we cannot determine whether, as Ewell contends, the ALJ erred in finding Ewell’s testimony not credible without seeing a transcript of his testimony. Nor can we determine whether, as Ewell contends, the ALJ improperly excluded one of Ewell’s colleagues from testifying without knowing whether other evidence may have made this specific colleague’s testimony duplicative. (In this regard, the Board’s decision indicates that multiple other colleagues testified on Ewell’s behalf.)

“[I]t is a fundamental principle of appellate procedure that a trial court judgment is ordinarily presumed to be correct and the burden is on an appellant to demonstrate, on the basis of the record presented to the appellate court, that the trial court committed an error that justifies reversal of the judgment.” (*Jameson v. Desta* (2018) 5 Cal.5th 594, 608-609.) ““A necessary corollary to this rule is that if the record is inadequate for meaningful review, the appellant defaults and the decision of the trial court should be

affirmed.””” (*Id.* at p. 609.) In the absence of a record of the proceedings before the Board, there is nothing for us to do other than affirm.<sup>1</sup>

### III. DISPOSITION

The judgment is affirmed. The Department is awarded its costs on appeal.

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RAPHAEL

J.

We concur:

SLOUGH

Acting P. J.

MENETREZ

J.

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<sup>1</sup> Ewell may have presumed that our task was to review the trial court’s findings because of an erroneous belief that the trial court was required to exercise its independent judgment. (See *Schmitt v. City of Rialto*, *supra*, 164 Cal.App.3d at p. 501 [“As to issues upon which the trial court has properly exercised its independent judgment, the appellate court reviews the findings of the *trial court* to determine whether they are supported by substantial evidence on the whole record.”], italics added.) After all, here the trial court did exercise its independent judgment, as it stated as such during the trial. However, “[d]ecisions of the State Personnel Board, an agency of constitutional authority [citation], are reviewed only to determine whether substantial evidence supports the determination, even when vested rights are involved.” (*Coleman v. Department of Personnel Administration*, *supra*, 52 Cal.3d at p. 1125.) Moreover, even if we were to review the trial court’s findings for substantial evidence, we would not be able to do so without a record of the proceedings before the Board. (See *Schmitt*, *supra*, at p. 501 [where trial court properly exercises its independent judgment, appellate court “reviews the findings of the trial court to determine whether they are supported by substantial evidence *on the whole record*”], italics added.) A determination of whether the trial court’s findings are supported by substantial evidence on the whole record requires, of course, the whole record.